



# STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

April 7, 2015

Ms. Lisa L. Wilson  
430 S. Elm  
Bunker Hill, IN 46914

*Re: Formal Complaint 15-FC-74; Alleged Violation of the Open Door Law by the  
Bunker Hill Town Council*

Dear Ms. Wilson,

This advisory opinion is in response to your formal complaint alleging the Bunker Hill Town Council ("Council") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Council has responded via Mr. Brandon Rush Esq. Attorney for the Council. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on February 26, 2015.

## BACKGROUND

Your complaint dated February 26, 2015 alleges a violation of the Open Door Law by the Bunker Hill Town Council. The complaint alleges an improper use of an executive session dated February 25, 2014 in violation of Ind. Code § 5-14-1.5-6.1.

On February 25, 2015, the Council met in an executive meeting to discuss a complaint of alleged misconduct filed against you. You allege you were denied permission to hear the complaint or to defend yourself. Afterwards, you were informed of your duties and reprimanded. You contend this is a violation of the ODL because no vote or decision can be made at an executive meeting.

Your complaint also alleges members of the Council met after a session on February 25, 2015 and discussed town business.

On March 13, 2015, counsel responded to your complaint. Mr. Rush contends no violation has occurred, because no vote took place and no disciplinary action occurred. Counsel notes the complaint alleges similar action against the town marshal, specifically

noting only a partial determination occurred. Counsel contends these do not meet the definition of final action prohibited by the ODL.

Counsel also responds to the allegation of post-meeting discussions, claiming these conversations do not relate to town meetings and are not protected by the ODL.

### ANALYSIS

It is the intent of the Open Door Law (ODL) the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. See Ind. Code § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. See Ind. Code § 5-14-1.5-3(a).

I have not been provided with a copy of the meeting minutes or the certification of the subject matter discussed. Both parties contend partial determinations occurred with regards to punishment, with counsel maintaining a partial determination does not constitute an ODL prohibition against final action.

Ind. Code § 5-14-1.5-3(b)(6)(B) states that “[e]xecutive sessions may be held ...to receive information concerning the individual's alleged misconduct; and, to discuss, **before a determination**, the individual's status as an employee.” *Emphasis added*. Without the benefit of the executive session notice, it is unclear the stated purpose for the meeting.

Here, however, it appears the Council did meet to receive information concerning alleged misconduct and to discuss your status as an employee and mete out any repercussions, if any. The Council's decision to reprimand you may have been preliminary, but the Council still had to determine to make the initial determination whether to reprimand. The determination as to whether to reprimand was a final action, regardless of whether a formal vote was taken. Any binding decision (or a decision not to issue an order) is final action.

Governing bodies should be mindful that the purpose of executive sessions is to receive information and to discuss sensitive matters in very narrow circumstances – not to make decisions based upon the information presented. All decisions would need to be made in public. While I lack sufficient information to draw a conclusion in this matter, I recommend the Council re-evaluate its practices consistent with the spirit of transparency.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', with a long, sweeping underline.

Luke H. Britt  
Public Access Counselor

Cc: Mr. Brandon Rush, Esq.